

United States District Court  
Eastern District of California

Antolin Andrews,

Plaintiff,

vs.

S. Cervantes,

Defendant.

No. Civ. S 03-1218 WBS PAN P

Findings and Recommendations

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December 2, 2004, the court denied plaintiff's request for leave to proceed in forma pauperis and closed the file upon the ground he was in violation of 28 U.S.C. § 1915(g). December 9, 2004, plaintiff appealed. February 23, 2005, plaintiff filed a paper styled, "Motion to Reopen," requesting this court set aside the judgment based upon the Ninth Circuit's decision in Andrews v. King, 398 F.3d 1113 (9th Cir. 2005). Plaintiff asserts this court should entertain his motion because he has withdrawn the appeal. Court records, however, do not show that the appeal has

1 been dismissed. Accordingly, this court should decline to  
2 entertain plaintiff's February 23, 2005, motion.

3 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these  
4 findings and recommendations are submitted to the United States  
5 District Judge assigned to this case. Written objections may be  
6 filed within 20 days of service of these findings and  
7 recommendations. The document should be captioned "Objections to  
8 Magistrate Judge's Findings and Recommendations." The district  
9 judge may accept, reject, or modify these findings and  
10 recommendations in whole or in part.

11 Dated: May 26, 2005.

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13 /s/ Peter A. Nowinski  
14 PETER A. NOWINSKI  
15 Magistrate Judge  
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